IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 3847 of 2007(G)

PETITIONER:

G. SOBHA, MUSIC TEACHER
(UNDER SUSPENSION), S.N.V. GIRLS HIGH SCHOOL,
PARAVOOR, KOLLAM DISTRICT.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVT.OF KERALA,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR OF EDUCATION, KOLLAM.

3. THE DISTRICT EDUCATIONAL OFFICER, KOLLAM.

4. MANAGER, S.N.V.GIRLS HIGH SCHOOL,
PARAVOOR, KOLLAM DISTRICT.

5. SMT.R. ALAKA, H.S.A.(ENGLISH)
S.N.V.GIRLS HIGH SCHOOL,
PARAVOOR, KOLLAM DISTRICT.

BY ADV. SRI.B.S.SWATHY KUMAR
SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH
SRI.M.V.THAMBAN
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the order No.B5/11718/05 dated 31.7.2006 issued by the 3rd respondent.

Ext.P2: True copy of the appeal filed by the petitioner before the 2nd respondent dated 22.8.2006.

Ext.P3: True copy of the notice dated 25.7.2006 issued by the 4th respondent to the petitioner.

Ext.P4: True copy of the reply dated 29.7.2006 submitted by the petitioner to the 4th respondent.

Ext.P5: True copy of the order dated 21.8.2006 issued by the 4th respondent.

Ext.P6: True copy of the memo of charges dated 25.8.2006 issued by the 4th respondent to the petitioner.

Ext.P7: True copy of the written statement dated 8.9.2006 submitted by the petitioner to the 4th respondent.

Ext.P8: True copy of the order No.B5/6977/06 dated 2.9.2006 issued by the 3rd respondent.

Ext.P9: True copy of the order No.B6/23577/2006 dated 4.11.2006 issued by the 2nd respondent.

Ext.P10: True copy of the representation dated 19.12.2006 submitted by the petitioner to the 1st respondent.

// True copy //

P.A. To Judge

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A.K.BASHEER, J.

W.P.(C)No.3847 OF 2007

Dated this the 25th day of June, 2007

JUDGMENT

Petitioner is a Music Teacher working in the school under the management of respondent no.4 but apparently her talent in music did not impress the manager. He placed her under suspension with effect from August 21, 2006, of course on a charge of insubordination, indiscipline and acts which were allegedly detrimental to the interest of the management. The Controlling Officer did not agree with the request made by the manager to extend the period of suspension beyond 15 days. On the contrary, the Manager was directed to reinstate the teacher forthwith. Ext.P8 is stated to be the order passed by the Controlling Officer in this regard on September 2, 2006. The Manager did not comply with the above direction. Instead he preferred an appeal before the Deputy Director of Education, who also concurred with the view taken by his subordinate officer. The order passed by the Deputy Director is on record as Ext.P9. All along the petitioner remained under suspension. Ultimately, the manager reinstated her in service on April 28,

2007. It is on record that petitioner had approached the Controlling Officer to disburse her pay and allowances as contemplated under sub Rule (8) of Rule 67 Chapter XIV A KER. Since the officer did not take any action pursuant to the said request, petitioner has preferred this writ petition for appropriate reliefs.

2. Sri.N.Achuthakurup, learned Senior counsel appearing for the manager submits that the Government is now in seisin of the matter. The revision petition preferred by the manager is yet to be considered by the Government. Petitioner can be paid salary and allowances, if ultimately she succeeds before the Government. In other words, the contention of the learned senior counsel is that unless and until the Government takes a decision on the revision petition preferred by the manager, the petitioner is not entitled to get her salary and allowances.

3. I am unable to agree with the above proposition. The admitted position is that the departmental authorities had concurrently found that the petitioner was liable to be reinstated in service with effect from the date of her suspension itself. The

request made by the Manager to extend the period of suspension beyond 15 days was turned down by the two authorities concurrently. Manager was in fact directed by the departmental officers to reinstate the petitioner in service forthwith.

4. The manager had not, admittedly, complied with the above directions. He had kept the petitioner out of service for more than 8 months. The academic loss sustained by the students apart, it has to be viewed from yet another angle. The manager is a statutory authority appointed under KER. He has to necessarily comply with the orders issued by the statutory authorities. It may be true that the manager had challenged the order of the appellate authority before the Government. But so long as the Government had not granted stay of operation of the order passed by the lower authority, the manager was bound to obey the orders. He cannot be heard to say that he will pay the salary and allowances to the petitioner once the Government takes a final decision in the matter.

5. More importantly, the provisions contained in sub rule (7) of Rule 67 Chapter XIV A KER unambiguously shows that the

teacher who has been reinstated in service shall be deemed to have been on duty during the period he was kept out of service, if no satisfactory cause is shown by the Manager. It will be open to the department to disburse the pay and allowances to the teacher as if he were not suspended. Significantly, the Manager had not shown sufficient reason despite the directions issued by the Department to reinstate the petitioner. Having regard to the totality of circumstances of this case, petitioner ought to have been paid salary and allowances. Therefore, respondents 1 and 3 shall disburse the salary and allowances to the petitioner for the period from August 21, 2006 till April 27, 2007 within one month from the date of receipt of a copy of this judgment. Headmaster shall forward the relevant bill to respondent no.3 within two weeks from the date of receipt of a copy of this judgment.

6. It is made clear that I have not considered the merit of the rival contentions. It will be open to the parties to urge all their contentions before the Government. It is also made clear that the direction to pay salary and allowance to the petitioner

will be subject to the result of the revision petition. However, it will be open to the Government/department to recover the pay and allowances that is now ordered to be paid to the petitioner from the Manager, if ultimately if is found that his actions were totally illegal and vitiated. Writ petition is disposed of in the above terms.

As regards the prayer made by the petitioner claiming promotion, it is made clear that it will be open to the petitioner to pursue Ext.P2 representation submitted by her in this regard. The competent authority shall take a decision on Ext.P2 after affording opportunity of hearing to the petitioner and the manager and all others who are likely to be affected by the order that may be passed. This shall be done as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

A.K.BASHEER, JUDGE

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